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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,534	11/10/2003	Paul Alexander	02-15	5407
30031	7590	01/23/2008		
MICHAEL W. HAAS RESPIRONICS, INC. 1010 MURRY RIDGE LANE MURRYSVILLE, PA 15668			EXAMINER DOUGLAS, STEVEN O	
			ART UNIT 3771	PAPER NUMBER
			MAIL DATE 01/23/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/705,534

Applicant(s)

ALEXANDER ET AL.

Examiner

/Steven O. Douglas/

Art Unit

3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-9,11-16 and 18-35 is/are pending in the application.
- 4a) Of the above claim(s) 3,4,11,12,18-21,24,25,33 and 34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5-9,13-16,22,23,26-32 and 35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 16 is rejected under 35 U.S.C. 102(b) as being anticipated by Friedlander (US Pat. 5,313,945).

The Friedlander reference discloses a patient treatment system (i.e. medical device) comprising a detector (18L,18R) to detect a characteristic of acoustic noise of a noise source (i.e. the medical apparatus)a means for minimizing acoustic noise (see Cancellation Control Unit in Fig. 3 and see col. 5, lines 6-16) arranged to cancel or minimize undesired noises associated with the patient treatment device, wherein the Cancellation Control Unit includes speakers that are arranged with respect to a table associated with the device to direct cancellation acoustic waves over such area in which the system is located (see col. 5, lines 6-16).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,5-9,13-16,22,23,26-32 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sullivan et al. (US Pat. 6,398,739) in view of Friedlander (US Pat. 5,313,945).

The Sullivan et al. reference discloses a patient treatment device (i.e. CPAP system) with associated blower and snore sensor 11 (i.e. microphone), but does not disclose a means for minimizing acoustic noise, as claimed. The Friedlander reference discloses another patient treatment system with a means for minimizing acoustic noise (see Cancellation Control Unit in Fig. 3 and see col. 5, lines 6-16) arranged to cancel or minimize undesired noises associated with the patient treatment device to thereby result in a more quiet/comforting patient treatment experience. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Sullivan et al. device to have a means for minimizing acoustic noise in view of the teachings of the Friedlander reference to achieve the predictable results of canceling or minimizing undesired noises associated with the patient treatment device and to thereby result in a more quiet/comforting patient treatment experience. *See KSR International Co. v. Teleflex Inc.*, 550 U.S.-, 82 USPQ2d 1385 (2007).

Response to Arguments

Applicant's arguments filed 11/30/07 have been fully considered but they are not persuasive. In regard to Applicant's argument that the Friedlander reference fails to disclose directing cancellation acoustic waves over an area in which the apparatus is located, see col. 5, lines 6-16 which discloses an embodiment secondary to the use of headphones. Also, in regard to Applicant's argument that the teaching of Friedlander is limited to use in MRI devices and would not advantageous to use in a systems for sleep disorders, Examiner disagrees. It appears to Examiner that modifying the Sullivan device to include a means for minimizing acoustic noise

similar to that of Friedlander would achieve predictable results especially since both systems include inherent noises that would affect the comfort of patient utilizing such devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Steven O. Douglas/ whose telephone number is (571) 272-4885. The examiner can normally be reached on Mon-Thurs 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steven O. Douglas/
Primary Examiner
Art Unit 3771

SD
1/10/08